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Morgan Romero

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## **PETRIE V. MICHETTI, AND THE INDELIBLE NATURE OF DONATIONS *INTER VIVOS***

Morgan Romero\*

Donations *inter vivos* are subject to a special set of rules in the Louisiana Civil Code, in addition to the law of conventional obligations.<sup>1</sup> The grounds for revocation of donations have been the subject of extensive debate among Louisiana courts, civil law scholars, and attorneys. As this note will demonstrate through the lens of *Petrie v. Michetti*,<sup>2</sup> a recent case decided by the Louisiana Fifth Circuit Court of Appeal, Louisiana law makes donations *inter vivos* irrevocable save exceptional circumstances where the law provides grounds for nullification in order to prevent obstructions that meddle with the free agency of the donation, and revocation on account of ingratitude.<sup>3</sup> This case note considers the vices of duress and undue influence and revocation for ingratitude, and discusses how the jurisprudence has resolved these difficult issues when presented with challenging factual circumstances.<sup>4</sup>

### **I. BACKGROUND**

Plaintiff Maxine Rearick (Ms. Rearick) filed suit<sup>5</sup> to revoke a donation of immovable property she had made to her daughter,

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\* J.D./D.C.L. Candidate (May, 2014) Paul M. Hebert Law Center, Louisiana State University. The author would like to thank Professor Melissa Lonegrass for her valuable insight and guidance throughout the writing of this case note.

1. Donations are governed by the provisions of Title II of Book III, whereas conventional obligations are addressed in Title IV.

2. *Petrie v. Michetti*, 10-122 (La. App. 5 Cir. 2011), 59 So. 3d 430.

3. See LA. CIV. CODE art. 1468.

4. See LA. CIV. CODE arts. 1478 (nullification due to fraud and duress), 1479 (nullification due to undue influence), and 1556 (revocation for the donee's ingratitude).

5. "Maxine Rearick died on May 21, 2010, during the course of the litigation. On August 26, 2010, Patricia Rearick Petrie, Joanne Rearick Belflower, and Linda Rearick Tillman, Ms. Rearick's daughters, were

Dixie Rearick Michetti (Ms. Michetti). Ms. Michetti was Ms. Rearick's principal caregiver for five years. During this time, she lived with her mother on the property which was made the object of the donation.

Several arguments transpired between Ms. Michetti and her sisters. One such argument caused Ms. Michetti to leave Ms. Rearick's home for several weeks. Ms. Michetti told Ms. Rearick that "she would move out of the Cedar Avenue property if her mother did not donate the property to her because she could not afford to be a caregiver without assurances that she would not be forced to leave."<sup>6</sup> At trial, Ms. Rearick testified that she donated the property to Ms. Michetti because "she felt sorry for her."<sup>7</sup>

The evidence presented at trial revealed the tension in the relationships between mother and daughter, although the source of the discord was disputed. Ms. Rearick claimed that Ms. Michetti kicked a stool that her feet were resting on, placed a blood pressure monitor on her stomach against her will, and regulated her visitors.<sup>8</sup> Ms. Rearick also contended that Ms. Michetti threatened to place her in a nursing home absent the donation.

One of the sisters accused Ms. Michetti of raising her voice at Ms. Rearick. Ms. Michetti acknowledged that she sometimes had to speak loudly so that her mother could hear her. One of the sisters admitted calling Elderly Protective Services with complaints on nearly forty occasions. The Elderly Protective Services representative found that the allegations of abuse were "unsubstantiated."<sup>9</sup> Another one of Ms. Rearick's daughters said that she never witnessed Ms. Michetti mistreat her mother. However, she admitted that she was angry when she learned of the

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substituted as parties appellants in the litigation." *Petrie v. Michetti*, 59 So. 3d at 432, n.1.

6. *Petrie v. Michetti*, 59 So. 3d at 433.

7. *Id.*

8. *Id.*

9. *Id.*

donation to her sister, and a fiery message that she left on her mother's answering machine reflecting her resentment was played at trial.

Ms. Rearick later admitted that for five years Ms. Michetti "applied for and picked up all her medicines, was a constant companion, sometimes cooked meals, bought groceries, helped her getting dressed, performed various household tasks, and took her to all of her hospital and doctor appointments."<sup>10</sup> The attorney who effected the donation testified that she observed no indications of duress. She stated that Ms. Rearick contemplated making the donation to Ms. Michetti multiple times during the few years preceding the act of donation. Ms. Rearick's physician testified that he recalled no indications of abuse in the twenty-five years he had administered care to Ms. Rearick and that from Ms. Michetti, he had "seen only care and concern for [Ms. Rearick's] well-being and comfort."<sup>11</sup> He described Ms. Rearick's family relationships as "strained."<sup>12</sup> Michetti's son-in-law also testified as to an absence of ill-treatment.

Ms. Rearick claimed that her consent to the donation was a product of duress, rendering it a nullity and, in the alternative, that the court should revoke the donation due to her daughter's ingratitude. The trial court denied Ms. Rearick's petition, holding that she failed to prove duress and that she failed to prove that Ms. Michetti had been guilty of cruel treatment, crimes, or grievous injuries.<sup>13</sup>

## II. DECISION OF THE COURT

The Fifth Circuit affirmed the decision of the trial court, finding the donation valid after a *de novo* review of the duress claim and applying the manifest error, or clearly wrong standard,

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10. *Id.* at 434.

11. *Id.* at 435.

12. *Id.*

13. *Id.* at 440.

to the revocation for ingratitude claim.<sup>14</sup> The court also mentioned the vice of undue influence, but dismissed it finding it was not present.<sup>15</sup>

As to the claim of duress, the court applied the “clear and convincing evidence” standard.<sup>16</sup> Based on the facts and testimony that the court deemed credible, the court concluded that the evidence was insufficient for a finding of duress.<sup>17</sup> The court based its holding on Louisiana Civil Code article 1959.<sup>18</sup>

The court recognized that Ms. Rearick relied “heavily on her testimony to the effect that Ms. Michetti threatened to place her in a nursing home if she did not donate the property to her.”<sup>19</sup> However, the court noted that Ms. Rearick also testified that she made the donation because she felt sorry for Ms. Michetti.<sup>20</sup> With respect to the nursing home allegation, which Ms. Michetti denied, the court held that there was no evidence that the donation was a product of the threat.<sup>21</sup> Ms. Michetti argued that her comment about having to move out if the property was not donated to her, since she needed guarantees that she would not be forced out of Ms. Rearick’s home, contemplated a lawful act.<sup>22</sup> The court concluded that the nursing home allegation, even if proved, constituted a lawful act and thus could not be grounds for nullification due to duress.<sup>23</sup>

With regard to plaintiff’s claim for revocation on account of ingratitude, the court held that the plaintiff had not carried her burden of proof. The court determined that the facts of the case, the lack of proof regarding Ms. Rearick’s accusations, and the trial

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14. *Id.* at 439. (The trial court, in error, applied the Code articles on undue influence to the duress issue).

15. *Id.*

16. LA. CIV. CODE art. 1483.

17. LA. CIV. CODE art. 1478.

18. *See* LA. CIV. CODE art. 1959.

19. Petrie, 59 So. 3d at 438.

20. *Id.*

21. *Id.*

22. *Id.* at 439.

23. *Id.* *See also* LA. CIV. CODE art. 1962.

testimony supported a finding that “Ms. Michetti’s actions did not rise to the level of cruel treatment and grievous injury under La. C.C. art. 1557.”<sup>24</sup>

### III. COMMENTARY

Louisiana’s strong policy to enforce parties’ contractual obligations is manifest in this case. In the exceptional cases where fraud, duress, undue influence, or the ingratitude of the donee can be proven by heightened evidentiary standards, the law provides access to the safeguards of nullification and revocation. Cases that involve challenging the validity of donations *inter vivos* are fact-intensive and largely a matter of degree. These cases are especially difficult to resolve since the evidence is often purely circumstantial. The *Petrie* case reflects the courts’ robust reluctance to interfere with facially valid donations and demonstrates the difficulty of surmounting such high evidentiary standards.

#### A. Duress

The *Petrie* court relied primarily on Louisiana Civil Code Article 1959, finding no evidence creating “a reasonable fear of unjust or considerable injury to [Ms. Rearick’s] person, property, or reputation.”<sup>25</sup> The courts found no evidence of “threats of imprisonment or great physical injury or death,” nor were such allegations made.<sup>26</sup> The only purported threats were Ms. Michetti’s ultimatum to her mother about moving out and the comment about placing her in a nursing home. Moreover, the court found no causal connection between the supposed threat and the donation. Since consent to the act of donation is vitiated by duress, the duress has to have influenced the act. Ms. Rearick did not seem to be deprived

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24. *Petrie v. Michetti*, 59 So. 3d at 440, 441; LA. CIV. CODE art. 1557.

25. LA. CIV. CODE art. 1959.

26. LA. CIV. CODE art. 1959 cmt.(b) (citing BLACK’S LAW DICTIONARY (Rev. 4th ed. 1968)).

of her liberty such that she was forced to submit to the donation. Finally, while Ms. Rearick suffered mild dementia, there was no evidence suggesting, nor did anyone argue, lack of capacity.<sup>27</sup> The evidence as a whole tended to reveal Ms. Rearick's unimpeded donative intent.

The court also based its decision on the notion that threatening to do a lawful act cannot constitute legal duress.<sup>28</sup> Moving out of a home and placing an older woman in a nursing home are both lawful acts. The court held that the alleged nursing home threat was entirely lawful.<sup>29</sup> The *Petrie* court analogized the facts of the instant case to those of *Guerin v. Guerin*.<sup>30</sup> In that case, the court held that a husband's threat to leave his wife if she refused to sign an act of sale was "patently insufficient" to prove duress that would vitiate the wife's consent.<sup>31</sup> The court similarly found that Ms. Michetti's ultimatum fell short of duress.<sup>32</sup>

Duress is very difficult to prove. Ms. Rearick failed to establish that the donation was procured by duress by clear and convincing evidence.<sup>33</sup> However, if the court had characterized Ms. Rearick's donation as a remunerative donation, given in return for past services rendered, the evidentiary standard would have been merely a preponderance of the evidence.<sup>34</sup> This is worth noting since the attorney who prepared the donation testified that Ms. Rearick told her that she wanted to donate the property because Ms. Michetti had been her caregiver for so long.<sup>35</sup> However, the court deemed the donation gratuitous based on its findings regarding what prompted Ms. Rearick to make the donation.<sup>36</sup>

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27. See, e.g., *Rose v. Johnson*, 940 So. 2d 181 (La. App. 3 Cir. 2006).

28. See LA. CIV. CODE art. 1962.

29. *Petrie v. Michetti*, 59 So. 3d at 439.

30. *Id.* at 438.

31. *Guerin v. Guerin*, 49 So. 2d 1053 (La. App. 1 Cir. 1984).

32. *Petrie v. Michetti*, 59 So. 3d at 438.

33. See LA. CIV. CODE art. 1483.

34. See LA. CIV. CODE art. 1527.

35. *Petrie v. Michetti*, 59 So. 3d at 434.

36. KATHYRN VENTURATOS LORIO, 10 LOUISIANA CIVIL LAW TREATISE, SUCCESSIONS AND DONATIONS §8.13 (West 2009) (stating that if "gratitude and

*B. Revocation on Account of Ingratitude*

In holding that the plaintiff failed to prove Ms. Michetti's ingratitude, the court relied on Louisiana Civil Code articles 1556 and 1557. According to those provisions, two cases permit revocation of a donation *inter vivos* for the donee's ingratitude: "[i]f the donee has attempted to take the life of the donor; or [i]f he has been guilty towards him of cruel treatment, crimes, or grievous injuries."<sup>37</sup> As to what constitutes the latter ground, Louisiana case law is sparse.<sup>38</sup> Relying predominantly on the writings of French writers Aubry and Rau, courts generally state that "injuries include any act naturally offensive to the donor."<sup>39</sup>

In *Porter v. Porter*, for example, the Second Circuit upheld a donation where actions of the donees, including purposefully crashing into the donor's vehicle, were provoked by the donor and were therefore justified defensive measures.<sup>40</sup> As *Porter* demonstrates, the context of the actions is important. For example, Ms. Michetti hid Ms. Rearick's medication, but the doctor said this was reasonable to ensure that Ms. Rearick did not exceed the proper dosage. Also, Ms. Michetti spoke in a loud tone to her mother because she had trouble hearing.

Other cases illustrate that acts of ingratitude are often quite severe. In *Erikson v. Feller*, the Third Circuit revoked a donation of immovable property for ingratitude where the donee, grandson of the donor, accused the donor of molesting his child.<sup>41</sup> The grandson's molestation allegation was unsubstantiated. Moreover,

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love" rather than a desire to pay back influenced the donor, the donation should be deemed gratuitous and thus the rules for donations *inter vivos* apply.) It seems that the *Petrie* court adopted this view.

37. LA. CIV. CODE art. 1557.

38. *Petrie v. Michetti*, 59 So. 3d at 440 (citing *Salassi v. Salassi*, 08-510 (La. App. 5 Cir. 2009) 13 So. 3d 670, 673).

39. *Id.* (citing 4 C. AUBRY & C. RAU, COURS DE DROIT CIVIL FRANÇAIS §708 (La. State Law Institute Trans. Vol. 3, 1965)).

40. *Porter v. Porter*, 821 So. 2d 663 (La. App 2 Cir. 2002).

41. *Erikson v. Feller*, 889 So. 2d 430 (La. App. 3 Cir. 2004).



the grandson tried to evict his grandfather from the property over which the grandfather retained a usufruct. Similarly, in *Sanders v. Sanders*, the Second Circuit revoked a donation for ingratitude when the donee son told his father, the donor, that he wished his parents would die, wrote a letter slandering his parents, and renounced his father.<sup>42</sup> Given the very limited circumstances in which Louisiana courts will revoke donations for the donee's ingratitude, the evidence in *Petrie* was simply inadequate.<sup>43</sup>

*C. Undue Influence and the Civil Law*

Louisiana Civil Code article 1479 states:

A donation inter vivos or mortis causa shall be declared null upon proof that it is the product of influence by the donee or another person that so impaired the volition of the donor as to substitute the volition of the donee or other person for the volition of the donor.<sup>44</sup>

Imported from the common law in 1991, the law of undue influence is fairly new in Louisiana. As a result, the scope of the doctrine and its place in Louisiana law is unclear. What is intriguing about *Petrie v. Michetti* is that the court dismissed undue influence very quickly. Ms. Rearick oddly did not plead it in her petition. In fact, "Ms. Rearick admitted that she 'was not attempting to prove that she had lost her volition to [Ms. Michetti], but rather that she was indeed aware at the time of the donation that she was being coerced into the action.'"<sup>45</sup>

Ms. Rearick's reluctance to plead undue influence may be related to the fact that few such claims have been successful. The

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42. *Sanders v. Sanders*, 768 So. 2d 739 (La. App. 2 Cir. 2000).

43. See also *Perry v. Perry*, 507 So. 2d 881 (La. App. 4 Cir. 1987) (revoking a donation by parents in favor of son after son had his parents' property seized to satisfy a debt that they owed him, causing his parents much distress); *Haydel v. Haydel*, 2008-0245 (La. App. 1 Cir. 10/31/08), 2008 WL 4763503 (revoking donations from a husband to a wife who, *inter alia*, questioned his masculinity, harassed him, called the police on him, and told him she did not love him; finding that these actions constituted cruel treatment and grievous injury).

44. LA. CIV. CODE art. 1479.

45. *Petrie v. Michetti*, 59 So. 3d at 439.

difficulty in defining the scope of undue influence is partially due to its inherent subjectivity.<sup>46</sup> Comment (b) to Louisiana Civil Code article 1479, cited frequently by the courts, describes undue influence as being “of such a nature that it destroys the free agency of the donor.”<sup>47</sup> Moreover, “mere advice or persuasion, or kindness and assistance, should not constitute influence that would destroy the free agency of a donor and substitute someone else’s volition for his own.”<sup>48</sup> The evidence characteristic of undue influence cases is predominantly circumstantial.

One of the few Louisiana cases holding a donation invalid due to undue influence is *Succession of Sidney Lounsberry*.<sup>49</sup> In that case, Sidney Lounsberry died, leaving everything to a son who lived with him. The sons left with nothing sought to nullify the will, arguing that the son who inherited the estate exercised undue influence over their father, who was suffering from mental problems. The court held in favor of the plaintiff brothers, finding undue influence, and revoked the will.<sup>50</sup> The court found that the son named in the will preyed upon his father’s weaknesses and encouraged his father’s irrational frustrations against his brothers.

In *Petrie*, the facts do not reveal a hindrance on Ms. Rearick’s free agency. Especially in light of the attorney’s testimony and bolstered by the physician’s testimony, Ms. Rearick exhibited clear donative intent. Furthermore, Ms. Michetti is “a natural object of [Ms. Rearick’s] bounty” as the daughter who took care of her for years, and there is no evidence that Ms. Michetti caused her mother to harbor bitterness against her sisters.<sup>51</sup>

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46. LA. CIV. CODE art. 1479, cmt.(b).

47. *Id.*

48. *Id.*

49. *Succession of Sidney Lounsberry*, 824 So. 2d 409 (La. App. 3 Cir. 2002).

50. *Id.*

51. LA. CIV. CODE art. 1479, cmt.(b); See Ronald J. Scalise, Jr., *Undue Influence and the Law of Wills: A Comparative Analysis*, 19 DUKE J. COMP. & INT’L L. 41, 58 (2008-2009) (“the catalyst and strength of all undue influence cases is the perceived ‘unnaturalness’ of the testamentary disposition”); *Cf.*

Since the law of undue influence does not have its roots in the civil law and it is a rather new import, the courts delineate the meaning of the doctrine in practice. The *Petrie* court stated *in dicta* that it would not have found undue influence had it been properly raised.<sup>52</sup> Nevertheless, since undue influence is a relative nullity and it was not pleaded, there was no opportunity for analysis, and thus clarification of the doctrine, in this case.

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Lounsberry, 824 So. 2d at 409 (revoking a donation finding that the donee exacerbated resentment on the part of his father (donor) against his brothers).

52. *Petrie v. Michetti*, 59 So. 3d at 439.